

ORIGINAL CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

The Estate of Olimpio Montoya, by and through Alfredo Espiritu Montoya, Special Administrator, Andrea Montoya, Surviving Spouse, Raymundo E. Montoya, Josefina Aguilar, Bayanie Montoya, Julieta M. Reyes, Alfredo Espiritu Montoya and Oliver Montoya, Surviving Children

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Continental Airlines, Inc., Continental Micronesia, Inc., and DOE Insurance Companies I through V

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT **04-00018**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

William L. Gavras, Esq.
Law Offices of Gorman & Gavras
2nd Floor, J&R Building
208 Route 4
Hagatna, Guam 96910

ATTORNEYS (IF KNOWN)

David Ledger, Esq.
Carlsmith Ball LLP
Suite 401, Bank of Hawaii Building
134 West Soledad Avenue
Hagatna, Guam 96910

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input checked="" type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C. §§ 1331, 1332 and 1446

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE

April 7, 2004

SIGNATURE OF ATTORNEY OF RECORD

David Ledger, Esq.

RECEIVED

APR - 7 2004

DISTRICT COURT OF GUAM
HAGATNA, GUAM

FOR OFFICE USE ONLY

CARLSMITH BALL LLP

DAVID LEDGER
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue, P.O. Box BF
Hagåtña, Guam 96932-5027
Tel No. 671.472.6813

Attorneys for Defendants
Continental Airlines, Inc. and
Continental Micronesia, Inc.

FILED
DISTRICT COURT OF GUAM
APR 07 2004
MARY L. M. MORAN
CLERK OF COURT

1

IN THE DISTRICT COURT OF GUAM

THE ESTATE OF OLIMPIO MONTOYA,
BY AND THROUGH ALFREDO ESPIRITU
MONTOYA, SPECIAL ADMINISTRATOR,
ANDREA MONTOYA, SURVIVING
SPOUSE, RAYMUNDO E. MONTOYA,
JOSEFINA AGUILAR, BAYANIE
MONTOYA, JULIETA M. REYES,
ALFREDO ESPIRITU MONTOYA AND
OLIVER MONTOYA, SURVIVING
CHILDREN,

Plaintiffs,

vs.

CONTINENTAL AIRLINES, INC.,
CONTINENTAL MICRONESIA, INC.,
AND DOE INSURANCE COMPANIES
I THROUGH V,

Defendants.

CIVIL CASE NO. 04-00018

**DEFENDANTS NOTICE OF
REMOVAL; EXHIBIT A;
DECLARATION OF SERVICE**

Defendants Continental Airlines, Inc. and Continental Micronesia, Inc., pursuant to 28 U.S.C. §§ 1331, 1332(a)(1)(2) and 28 U.S.C. §1446, hereby remove the above action from the Superior Court of Guam to this Court on the following grounds:

1. The above action was filed in the Superior Court of Guam as Civil Case No. CV0313-04 on or about March 12, 2004, and is now pending in that Court. Defendants first learned of the action on or about March 18, 2004.


2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 in that the civil action arises under a treaty of the United States, specifically the Warsaw Convention, and jurisdiction on diversity of citizenship under 1332(a)(1) and (2).

3. Defendants are thus entitled to remove the above action from the Superior Court of Guam to this Court pursuant to 28 U.S.C. §§ 1331 and 1332(a)(1) and (2) and 28 U.S.C. §1446.

4. Copies of all process, pleadings and orders served upon Defendant are attached as Exhibit "A" and filed herewith.

DATED: Hagåtña, Guam, April 7, 2004.

CARLSMITH BALL LLP



DAVID LEDGER
Attorneys for Defendants
Continental Airlines, Inc. and
Continental Micronesia, Inc.

William L. Gavras, Esq.
LAW OFFICES OF GORMAN & GAVRAS
 A Professional Corporation
 2nd Floor, J&R Building
 208 Route 4
 Hagåtña, Guam 96910
 Telephone: 472-2302
 Facsimile: 472-2342

NO. 0313-04
 2004-12-01 2:22

Attorneys for Plaintiffs
 The Estate of Olimpio Montoya,
 by and through Alfredo Espiritu
 Montoya, Special Administrator;
 Andrea Montoya, Surviving Spouse;
 Raymundo E. Montoya, Josefina Aguilar,
 Bayanie Montoya, Julieta M. Reyes,
 Alfredo Espiritu Montoya and Oliver Montoya;
 Surviving Children

**IN THE SUPERIOR COURT
 OF GUAM**

The Estate of Olimpio Montoya,
 by and through Alfredo Espiritu
 Montoya, Special Administrator;
 Andrea Montoya, Surviving Spouse;
 Raymundo E. Montoya, Josefina Aguilar,
 Bayanie Montoya, Julieta M. Reyes,
 Alfredo Espiritu Montoya and Oliver Montoya;
 Surviving Children,

CIVIL CASE NO. **CV 0313-04**

Plaintiffs,

vs.

**COMPLAINT AND
 DEMAND FOR JURY
 TRIAL**

**CONTINENTAL AIRLINES, INC.;
 CONTINENTAL MICRONESIA INC.;**
 and DOE Insurance Companies
 I through V,

Defendants

Plaintiffs, The Estate of Olimpio Montoya, by and through Alfredo Espiritu
 Montoya, Special Administrator; Andrea Montoya, Surviving Spouse; Raymundo E.
 Montoya, Josefina Aguilar, Bayanie Montoya, Julieta M. Reyes, Alfredo Espiritu

EXHIBIT A

Montoya, et. al. v. Continental Airlines, Inc., et. al
Complaint and Demand for Jury Trial
March 9, 2004

Montoya and Oliver Montoya; Surviving Children, by and through their undersigned counsel, sue jointly and severally Defendants Continental Airlines, Inc., Continental Micronesia Inc. and DOE Insurance Companies I through V and allege as follows, to wit:

GENERAL ALLEGATIONS

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. Sections 1332 and 1610.

2. At all times material hereto, Plaintiff Alfredo Montoya, was and is a U. S. Citizen of the United States and a resident of Guam; Plaintiffs Andrea Montoya, Raymundo Montoya, Oliver Montoya, Josefina Aguilar, Julieta M. Reyes and Bayanie Montoya, were and are citizens of the Republic of the Philippines and Andrea Montoya, Raymundo Montoya and Oliver Montoya are permanent residents of the United States and reside in Guam and Josefina Aguilar, Julieta Reyes and Bayanie Montoya reside in the Philippines.

3. Upon information and belief, at all times material hereto, Defendant Continental Airlines, Inc. was and is a foreign corporation incorporated in the State of Delaware and authorized to do business in the Territory of Guam and was actively engaged in conducting the business of airline transportation.

4. Upon information and belief, at all times material hereto, Defendant Continental Micronesia Inc. was and is a foreign corporation incorporated in the State of Delaware and authorized to do business in the Territory of Guam and was actively engaged in conducting the business of airline transportation.

MON. 23. 2004 11:29AM CONTINENTAL AIRLINES NO. 3019 1. 0

Montoya, et. al. v. Continental Airlines, Inc., et. al
Complaint and Demand for Jury Trial
March 9, 2004

5. Upon information and belief, Defendant Continental Micronesia is a subsidiary of Defendant Continental Airlines Inc. wherein Defendant Continental Airlines Inc. owns at least 90% of the stock of Defendant Continental Micronesia Inc..

COUNT I – NEGLIGENCE (COMMON CARRIER)

6. Plaintiffs readopt and reallege each and every allegation as stated in paragraphs 1 through 5 as if fully set forth herein.

7. Upon information and belief, on June 8, 2002, at all times material hereto, Defendant Continental Airlines, Inc., was a common carrier engaged in the business of transporting paying passengers in aircraft it owned, leased, operated, managed, maintained, and/or controlled. As a common carrier, Continental Airlines, Inc. was obligated to provide the highest degree of care to its passengers.

8. Upon information and belief, on June 8, 2002 and at all times material hereto, Defendant Continental Micronesia Inc. was authorized to do and is doing business in Guam for the purpose of providing transportation/aircraft to passengers and as a common carrier was obligated to provide the highest degree of care to its passengers.

9. On or about June 8, 2002, Defendants owed, leased and/or were responsible for Flight #934, which was used to transport passengers as a common carrier, and which aircraft Defendants operated, maintained, and/or otherwise controlled by and through agents and/or employees, acting within the course and scope of their employment.

MINI. 23. 2007 11. 27nm CONTINENTAL AIRLINES INC. 001 0019 11 9

Montoya, et. al. v. Continental Airlines, Inc., et. al
Complaint and Demand for Jury Trial
March 9, 2004

10. On or about June 8, 2002, Defendants accepted Olimpio Montoya as a ticketed passenger for said flight #934 originating in Manila, Philippines, ultimately destined for Guam.

11. On or about June 8, 2003, after said aircraft had departed from Manila, Philippines, Olimpio Montoya while a ticketed passenger on said flight.

12. While on said flight Olimpio Montoya suffered medical problems and a cerebral hemorrhage.

13. Defendants through employees and agents, were negligent and breached the common law duty they owed to Olimpio Montoya, in the following manner:

a. Defendants through agents and/or employees, failed to take adequate measures to determine the life-threatening medical condition of Olimpio Montoya, and render, provide and/or secure the necessary medical care.

b. Defendants through agents and/or employees, failed to take adequate measures to protect the health of Olimpio Montoya.

c. Defendants through agents and/or employees, failed to render, provide and/or secure necessary immediate medical attention for Olimpio Montoya.

d. Defendants' agents and/or employees failed to divert said aircraft and land at the nearest available airport.

f. Defendants failed to furnish the subject aircraft with sufficient medical equipment.

g. Defendants' agents and/or employees failed to contact ground personnel to obtain medical assistance.

MON. 23. 2004 11:27 AM CONTINENTAL AIRLINES REC-2075 11 19

Montoya, et. al. v. Continental Airlines, Inc., et. al
Complaint and Demand for Jury Trial
March 9, 2004

h. Defendants by and through agents and or employees, departed from accepted airline industry standard practice in failing to take adequate measures to protect the health of the ticketed passenger, Olimpio Montoya.

14. As a direct and proximate result of the negligence and carelessness of the Defendants, Olimpio Montoya suffered severe and grievous injuries and/or the aggravation of a pre-existing condition and sustained physical and mental pain and suffering, anguish, grief, humiliation, personal inconvenience, loss of the capacity for the enjoyment of life, shorter life span and death.

15. As a direct and proximate result of Defendants' negligence as described herein, Olimpio Montoya has incurred medical and related expenses.

16. As a direct and proximate cause of Defendant's negligence:

a. Olimpio Montoya was deprived a chance of survival and quality of life.

b. Olimpio Montoya was deprived a chance of survival and quality of life greater than fifty percent.

17. The foregoing conduct by Defendants through employees and agents exhibited a callous, cruel, careless, oppressive, willful and/or reckless indifference to the safety, welfare, health and well being of Olimpio Montoya. By reason of the conduct described herein, Defendants should be compelled to compensate Plaintiffs with punitive damages.

18. At all times material hereto, Plaintiff Andrea Montoya was the wife of and is the widow of Olimpio Montoya, deceased.

Montoya, et. al. v. Continental Airlines, Inc., et. al
Complaint and Demand for Jury Trial
March 9, 2004

19. As a direct and proximate result of Defendants' negligence, Plaintiff Andrea Montoya has been deprived of the spousal love, affection, services, support, society and comfort of her deceased husband, Olimpio Montoya.

20. At all times material hereto, Plaintiffs Raymundo E. Montoya, Josefina Aguilar, Bayanie Montoya, Julieta M. Reyes, Alfredo Espiritu Montoya and Oliver Montoya were and are the children of their father Olimpio Montoya, deceased.

21. As a direct and proximate result of Defendants' negligence, Plaintiffs Raymundo E. Montoya, Josefina Aguilar, Bayanie Montoya, Julieta M. Reyes, Alfredo Espiritu Montoya and Oliver Montoya; Surviving Children, have been deprived of the parental love, affection, services, support, society and comfort of their deceased father, Olimpio Montoya

22. As a further direct and proximate result of the negligence of Defendants, Plaintiffs respectively were forced to suffer and endure past and future emotional and mental harm and suffering pecuniary losses, loss of comfort, love and affection, hedonic damages, loss of enjoyment of life, society and protection, loss of parental consortium, loss of spousal consortium, and loss of funeral and burial expenses.

WHEREFORE, Plaintiffs demand judgment against Defendants, Continental Airlines, Inc., Continental Micronesia Inc. and DOE Insurance Companies I through V for money damages in an amount of excess of One Million Dollars (\$1,000,000.00) together with court costs and such other relief as this Court deems meet and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury in the action of six (6) persons.

Montoya, et. al. v. Continental Airlines, Inc., et. al
Complaint and Demand for Jury Trial
March 9, 2004

LAW OFFICES OF GORMAN & GAVRAS

Date: March 9, 2004

By: 

WILLIAM L. GAVRAS, ESQ.

Attorneys for Plaintiffs

The Estate of Olimpio Montoya,

by and through Alfredo Espiritu

Montoya, Special Administrator;

Andrea Montoya, Surviving Spouse;

Raymundo E. Montoya, Josefina Aguilar,

Bayanie Montoya, Julieta M. Reyes,

Alfredo Espiritu Montoya and Oliver Montoya;

Surviving Children

William L. Gavras, Esq.
LAW OFFICES OF GORMAN & GAVRAS
A Professional Corporation
2nd Floor, J&R Building
208 Route 4
Hagåtña, Guam 96910
Telephone: 472-2302
Facsimile: 472-2342

SUMMONS
2004 MAR 12 11:22
CLERK
BY: _____

Attorneys for Plaintiffs
The Estate of Olimpio Montoya,
by and through Alfredo Espiritu
Montoya, Special Administrator;
Andrea Montoya, Surviving Spouse;
Raymundo E. Montoya, Josefina Aguilar,
Bayanie Montoya, Julieta M. Reyes,
Alfredo Espiritu Montoya and Oliver Montoya;
Surviving Children

IN THE SUPERIOR COURT
OF GUAM

The Estate of Olimpio Montoya,
by and through Alfredo Espiritu
Montoya, Special Administrator;
Andrea Montoya, Surviving Spouse;
Raymundo E. Montoya, Josefina Aguilar,
Bayanie Montoya, Julieta M. Reyes,
Alfredo Espiritu Montoya and Oliver Montoya;
Surviving Children,

CIVIL CASE NO. CIV 03-13-04

Plaintiffs,

SUMMONS

vs.

CONTINENTAL AIRLINES, INC.;
CONTINENTAL MICRONESIA INC.;
and DOE Insurance Companies
I through V,

Defendants.

TO: CONTINENTAL AIRLINES, INC.

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon the Law
Offices of Gorman & Gavras, Plaintiffs' attorney, whose address is 2nd Floor, J & R

Montoya, et. al. v. Continental Airlines, Inc., et. al
Summons
March 9, 2004

Building, 208 Route 4, Hagåtña, Guam 96910, an Answer to the Complaint which is herewith served upon you, within twenty (20) days after service upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

RICHARD B. MARTINEZ, (Acting) Clerk of Court
Superior Court of Guam

12 MAR 2004
Dated: _____, 2004

By James R. Borja
DEPUTY CLERK

DECLARATION OF SERVICE

I, David Ledger, hereby declare under penalty of perjury of the laws of the United States, that on April 7, 2004, I will cause to be served, via hand delivery, a true and correct copy of DEFENDANTS NOTICE OF REMOVAL; EXHIBIT A upon Plaintiff's Counsel of record as follows:

William L. Gavras, Esq.
Law Offices of Gorman & Gavras
2nd Floor, J&R Building
208 Route 4
Hagåtña, Guam 96910

Executed this 7th day of April 2004 at Hagåtña, Guam.


DAVID LEDGER